

EXHIBIT 3

1
2 UNITED STATES DISTRICT COURT
3 FOR THE SOUTHERN DISTRICT OF NEW YORK
4 Case No. 1:21-cv-04362-JPC

-----x

4 FRANK BRUNCKHORST III, individually and
5 his capacity as trustee of THE FRANK
6 BRUNCKHORST III 2001 TRUST,

Plaintiff,

7 - against -

8 ERIC BISCHOFF, SUSAN STRAVITZ KEMP, in her
9 capacity as co-trustee of THE BARBARA
10 BRUNCKHORST 1994 TRUST and executrix of
11 THE ESTATE OF BARBARA BRUNCKHORST, AND
12 RICHARD TODD STRAVITZ, in his capacity as
13 co-trustee of THE BARBARA BRUNCKHORST 1994
14 TRUST, trustee of THE BARBARA BRUNCKHORST
2010 TRUST, and executor of THE ESTATE OF
BARBARA BRUNCKHORST,

Defendants.

-----x

ERIC BISCHOFF,

Counterclaim-Plaintiff,

17 - against -

18 FRANK BRUNCKHORST III, individually and in
19 his capacity as trustee of THE FRANK
20 BRUNCKHORST III 2001 TRUST, and in his
21 capacity as trustee of THE FRANK
BRUNCKHORST 2020 INVESTMENT TRUST-A,

Counterclaim-Defendant.

-----x

22 December 15, 2022

23 10:05 a.m.

24
25 *CAPTION CONTINUED ON NEXT PAGE*

1 ERIC BISCHOFF

2 over to the Bischoff side; right?

3 A It didn't go to the Bischoff
4 side.

5 Q Where did it go?

6 A To the Martin side.

7 Q But it went to the opposite
8 side of the Brunckhorsts?

9 A Yes.

10 Q Now, you know, don't you,
11 that the founders intended that Boar's
12 Head would be equally divided between the
13 two family groups, being the Brunckhorst
14 family on the one side and the
15 Martin-Bischoff family on the other side;
16 right?

17 A I don't -- they never told
18 me about it. But that's sort of the
19 lore. That's kind of the basic
20 understanding. But I never heard it from
21 them.

22 (The above-referred-to
23 document was marked as Exhibit 5 for
24 identification, as of this date.)

25 Q We've marked as Bischoff 5,

ERIC BISCHOFF

1
2
3
4
5
6
7
8
9
10
11

12 MR. REED: Let's mark the
13 shareholder's agreement.

14 (The above-referred-to
15 document was marked as Exhibit 11 for
16 identification, as of this date.)

17 Q So we've handed you, Mr.
18 Bischoff, what's been marked Bischoff 11,
19 my tab 12.

20 Do you recognize this as a
21 copy of the 1991 Boar's Head
22 shareholder's agreement?

23 A Yes.

24 Q Now, you've signed this
25 agreement in 1991; correct?

1 ERIC BISCHOFF

2 A Yes.

3 Q And did you own your shares
4 directly at that time or through a trust?

5 A I don't remember.

6 Q Now, if you look at the back
7 page of the agreement, the signature
8 page, it's EBNY4554; right?

9 A Correct.

10 Q You see the signatories are
11 Barbara Brunckhorst; correct?

12 A Yes.

13 Q And she's signing it in her
14 individual capacity, not as indicated as
15 a representative of any trust; right?

16 A I don't know.

17 Q There's nothing there that
18 indicates --

19 A No.

20 Q -- she is signing as a
21 trustee; right?

22 A No. There's nothing in
23 there that shows that.

24 Q And below, there's the
25 Alvina Martin 1988 trust, and there are

1 ERIC BISCHOFF

2 again, please?

3 Q What do you understand to be
4 the purpose of the requirement that a
5 family member to whom shares are
6 transferred must be an active employee?

7 A The general concept is if
8 someone -- owns shares, they should be
9 involved in the business, active
10 employee.

11 Q And what's the source of
12 that understanding?

13 A I think they want people
14 engaged in the business.

15 Q You testified to what your
16 understanding was. I'm asking where that
17 understanding came from.

18 A From conversations I've had
19 many years ago with the people that
20 signed this.

21 Q And why is it important that
22 somebody to whom shares are transferred
23 is involved in the business?

24 A Could you ask that again,
25 please?

1 ERIC BISCHOFF

2 what the problems were. I don't remember
3 what he said specifically about the
4 problems.

5 Q Do you recall that one of
6 the problems was the lawsuit that was
7 going on between you and the Martins?

8 A No.

9 (The above-referred-to
10 document was marked as Exhibit 13 for
11 identification, as of this date.)

12 Q You could put that down for
13 a second. Let me sort of set the stage
14 here.

15 After that discussion that
16 you just testified about with Frank,
17 there came a point when you, Frank and
18 the Martins and your vehicles signed what
19 we've been calling the interim settlement
20 agreement; right?

21 A Yes.

22 Q And I'm not going to purport
23 to describe all of it.

24 But am I right that sort of
25 the gist of that agreement was that there

1 ERIC BISCHOFF

2 was going to be a pause in the litigation
3 while a sale of the company was explored?

4 A Yes.

5 Q Now, as part of that, you
6 wanted the ability to do some estate
7 planning that involved transferring
8 shares to a trust for the benefit of your
9 daughters?

10 A Correct.

11 Q And do you recall that Frank
12 and RSM were agreeable to that, so long
13 as you agree that if there was no sale,
14 you would take those shares and transfer
15 them back to yourself?

16 A Correct.

17 Q And is that the reason why
18 these estate and tax planning provisions
19 are in the agreement?

20 MR. SWARTZ: Objection.

21 A I don't know.

22 Q Do you know any other reason
23 why those are in the agreement?

24 MR. SWARTZ: Objection.

25 A I don't know. I don't -- I

1 ERIC BISCHOFF

2 A No. I don't think so, no.

3 Q And you didn't discuss them
4 with RSM because you don't talk to RSM?

5 A No.

6 Q So is your understanding
7 something that came from your lawyer or
8 anywhere else? And don't tell me what
9 your lawyer did or didn't tell you.

10 A Yeah. It was through my
11 attorneys that all this was laid out.

12 Q Your position here in this
13 lawsuit is that Frank violated the ISA;
14 right?

15 A Yes.

16 Q And how do you believe he
17 violated it?

18 A In two ways. One is that --
19 he took shares from his trust, put it in
20 this new trust that was set up during the
21 interim settlement agreement. And when
22 it went back, it didn't go back to the
23 trust. It went back to him personally.
24 And it was supposed to go back to the
25 entity that gave those shares during the

1 ERIC BISCHOFF

2 interim settlement agreement. And the
3 other is that when he got those shares
4 back, he wasn't a full-time working
5 member.

6 Q Now, when did you come to
7 the belief that Frank had violated the
8 ISA?

9 MR. SWARTZ: Apart from
10 conversations with counsel.

11 MR. REED: I'm just asking
12 when.

13 A When? I don't remember.

14 Q And now my question is, how?
15 How did you come to the belief that Frank
16 had violated the ISA?

17 MR. SWARTZ: Again,
18 without -- if you could say from
19 counsel. But don't reveal any
20 communications with counsel.

21 A From counsel.

22 Q And who was the counsel?

23 A Counsel is my attorneys.

24 Q The esteemed Mr. Swartz?

25 A And Ed Saviano.

1 ERIC BISCHOFF

2 MR. SWARTZ: And the

3 esteemed Ed Saviano.

4 Q Do you believe that Frank
5 intentionally violated the ISA?

6 A No.

7 Q Are you aware of any benefit
8 that Frank would receive by virtue of
9 holding his shares in his individual
10 name, rather than through his trust?

11 A No.

12 Q Are you harmed in any way by
13 Frank holding his shares in his
14 individual name, rather than in a trust?

15 A No.

16 Q Can you think of any way
17 that the company is impacted by Frank
18 holding his shares individually or in a
19 trust?

20 A No.

21 Q So am I perceiving this
22 right that you were basically trying to
23 take advantage -- is almost a foot fault
24 to get Frank's shares?

25 A No.

1 ERIC BISCHOFF

2 market value?

3 A I'm not aware.

4 Q Did you obtain any sort of
5 fair market valuation of the shares in
6 connection with transferring them back to
7 yourself?

8 A I don't remember.

9 Q And you don't recall that
10 was required by the agreement?

11 A I don't.

12 Q Who would know that? Who
13 would know whether a valuation was
14 prepared?

15 A My attorneys.

16 Q Now, there was an occasion
17 in 2012 when you transferred some of your
18 Boar's Head shares to a trust for the
19 benefit of your daughters; right?

20 A In 2012?

21 Q Yes.

22 A Yes. I applied -- I suggest
23 that I -- I didn't handle all that, but
24 yes. Specifically what happened with
25 that, I'm not sure what stages it went

1 ERIC BISCHOFF

2 through, how far it got and to what
3 point.

4 Q For the sake of trying to be
5 efficient, you know that in 2012, you
6 transferred shares to a trust for the
7 benefit of your daughters, and then you
8 signed an agreement to rescind that
9 transfer; right?

10 A Correct.

11 Q Now, when Frank and RSM
12 found out that you had transferred shares
13 to the -- strike it.

14 When Frank and RSM found out
15 that you had transferred shares to a
16 trust for the benefit of your daughters,
17 they objected because your daughters were
18 not working members; right?

19 A Correct.

20 Q Now, you previously
21 testified in the Florida case that you
22 knew the shareholder's agreement did not
23 permit you to transfer those shares to
24 your daughters, but you believed you
25 obtained a carve-out in the 2008

1 ERIC BISCHOFF

2 settlement agreement that resolved
3 the 2005 lawsuit; right?

4 A Correct.

5 Q But you ultimately came to
6 understand there was no such carve-out?

7 A Correct.

8 Q So your transfer to your
9 daughters violated the shareholder's
10 agreement?

11 A You know, I -- we didn't
12 fight it because they objected. If we
13 fought it and we lost, there was a lot at
14 stake because I would get bought out. So
15 it wasn't worth fighting over, litigating
16 over because the outcome would have been
17 very punitive.

18 Q Do you have that deposition
19 transcript in front of you from the 2022
20 deposition as Exhibit 6?

21 A Yup.

22 Q Turn, if you would, to
23 page 120.

24 A 120?

25 Q Yes.

1 ERIC BISCHOFF

2 for a carve-out; right?

3 "ANSWER: Uh-uh.

4 "QUESTION: You know you
5 violated the 1991 shareholder's
6 agreement; right?

7 "ANSWER: Correct."

8 Q Did you give those answers
9 to those questions?

10 A Yes.

11 Q Now, as we mentioned, you
12 signed an agreement with the other
13 shareholders in which you were permitted
14 to rescind the transfer; right?

15 A Excuse me. Say that again?

16 Q You signed an agreement with
17 RSM and Frank that permitted you to
18 rescind that 2012 transfer to your
19 daughters?

20 A Correct.

21 Q You were aware at the time
22 that instead of permitting you to rescind
23 the transfer to your daughters, RSM and
24 Frank could have exercised rights under
25 the shareholder's agreement to purchase

1 ERIC BISCHOFF

2 The first one is by Barbara
3 Brunckhorst on behalf of the Barbara
4 Brunckhorst 1994 trust; yes?

5 A Yes.

6 Q And the second one is by
7 Barbara Brunckhorst on behalf of the
8 Barbara Brunckhorst 2010 trust; yes?

9 A Yes.

10 Q And the third is by Barbara
11 Brunckhorst individually; right?

12 A Yes.

13 Q Now, we've established,
14 haven't we -- and if not, we could
15 look -- that Barbara Brunckhorst didn't
16 own any shares in her individual capacity
17 in 2013; right?

18 A Yes.

19 Q So if we look back at these
20 events of 2012 and 2013, is it fair to
21 say that you mistakenly violated the
22 Boar's Head shareholder's agreement, and
23 Frank and the other Boar's Head
24 shareholders showed grace by not taking
25 your shares?

1 ERIC BISCHOFF

2 A Yes.

3 Q Now, you believe that Frank
4 has violated the interim settlement
5 agreement by transferring shares to a
6 trust they're not allowed to be in;
7 right?

8 A Correct.

9 Q Why aren't you showing him
10 the same grace he showed you?

11 A Because I didn't take -- I
12 don't -- I never had shares. Frank has
13 the full value of his shares. I never
14 had his shares. What I'm saying is the
15 conditions are different because I'm
16 looking to get shares that my family had
17 back from the Brunckhorsts. And he
18 didn't -- you know, it wasn't shares
19 shifted to the Bischoff-Martin side that
20 went to someone else besides Frank. So
21 it's more of a -- that's the reason.

22 Q Which shares does Frank have
23 that ever belonged to the Bischoffs?

24 A No. The Brunckhorst.

25 Q Right.

1 ERIC BISCHOFF

2 Which shares does Frank have
3 that ever belonged to the Bischoffs?

4 A Well, it's the Brunckhorst
5 side that has it, not Frank -- well, who
6 knows what shares are which. But it's
7 the Brunckhorst side that took advantage
8 of the fact that my father died in '73
9 and took his shares. So this is the
10 reverse of that.

11 Q And how did they do that?

12 A I know they did it. I don't
13 know how they did it. Maybe through the
14 same thing.

15 Q Let's just be clear.

16 What did they do?

17 A When my father died, my
18 father was bought out by the
19 Brunckhorsts.

20 Q And was that pursuant to
21 some agreement?

22 A I don't know. It was in
23 '73. I wasn't involved. I'm sure it
24 was. I mean I'm sure they did it, yeah.
25 I guess they did it. I wasn't around.

1 ERIC BISCHOFF

2 But it was transferred.

3 Q And you believe they took
4 advantage of your father in that
5 circumstance?

6 A I wouldn't put it that way.
7 I don't know what the situation was.

8 Q Do you know if your father
9 was paid any less than the fair value of
10 his estate?

11 A Yeah. I think it was book
12 value. Pretty sure it was book value.

13 Q Was it something that was
14 agreed upon?

15 A Yes. It was agreed upon, I
16 guess. Again, I wasn't involved with
17 that.

18 Q You really have no idea of
19 the circumstances surrounding this
20 transfer of shares from your father's
21 estate to the Brunckhorsts; right?

22 A Correct.

23 Q And the fact is today, the
24 Brunckhorsts own 50 percent?

25 A Correct.

1 ERIC BISCHOFF

2 Q And that's historically what
3 they've always been supposed to own;
4 right?

5 A Well, supposed to, that's
6 kind of a loose term, but yes.

7 Q We already talked about
8 this, and we already had your testimony
9 that historically, the families were
10 supposed to own 50-50: 50 on the
11 Brunckhorst side, 50 on the
12 Bischoff-Martin side?

13 A Yes. The general intent was
14 that.

15 Q So there's nothing that
16 contrasts -- contradicts the general
17 historical intent of the Bischoffs
18 owning -- strike it.

19 There's nothing about the
20 Brunckhorsts owning 50 percent that is
21 wrong in terms of the general historical
22 intent of the company; right?

23 A No.

24 Q Now, you believe that Frank
25 blew the deadline to exercise his right

1 ERIC BISCHOFF

2 to buy Barbara's shares?

3 A Right. Barbara's trust
4 shares.

5 Q But you know he wants them?

6 A I'm sure he does. It's
7 apparent today.

8 Q If I were to ask him the
9 same question, why aren't you showing him
10 the same grace he showed you, would you
11 give the same answer that you just gave?

12 A Yes.

13 THE WITNESS: Could we take
14 a short one?

15 MR. REED: Yes.

16 THE VIDEOGRAPHER: The time
17 on the video monitor is 4:03 p.m.
18 We're off the record. This ends
19 Media 4.

20 (A short recess was taken.)

21 THE VIDEOGRAPHER: We are
22 back on the record. The time on the
23 video monitor is 4:18 p.m. This
24 starts Media 5.

25 (The above-referred-to